

Message Text

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ACTION STR-07

INFO OCT-01 ISO-00 STRE-00 AF-10 ARA-10 EA-10 EUR-12

NEA-11 AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00

EB-08 FRB-03 H-01 INR-10 INT-05 L-03 LAB-04

NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15 ITC-01

TRSE-00 ICA-11 SP-02 SOE-02 OMB-01 DOE-15 IO-13

DOEE-00 SSO-00 /167 W

-----095854 161157Z /21

P 161022Z JUN 78

FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 0914

INFO AMEMBASSY BRUSSELS

LIMITED OFFICIAL USE SECTION 01 OF 02 GENEVA 09123

USMTN USEEC

STR FOR ACTION

STR PASS CODEL

E.O. 11652: N/A

TAGS: MTN, ETRD, EEC

SUBJECT: GOVERNMENT PROCUREMENT - US/EC BILATERAL-JUNE 14

1. SUMMARY: MTN DEL MET BRIEFLY WITH EC DEL TD DISCUSS
OUTSTANDING DIFFERENCES ON EX ANTE PUBLICITY, EX POST
INFORMATION, AND THRESHOLD. EC WAS IN CONCILIATORY MOOD
AND ATTEMPTING TO REACH COMPROMISES TO EXTENT POSSIBLE
AT "COMMISSION" LEVEL. END SUMMARY.

2. US (NEWKIRK) AND EC (DERISBOURG) MET TO ATTEMPT
TO NARROW DIFFERENCES ON EX POST AND EX ANTE INFORMATION.
IN ADDITION, EC BROUGHT UP NATIONAL SECURITY PROVISIONS
AND THRESHOLD LEVELS.

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3. EX POST INFORMATION - DERISBOURG STRESSED THAT SOME
MEMBER STATES STILL COULD NOT MOVE TO MANDATORY RE-
QUIREMENT TO GIVE "NAME AND AMOUNT" TO LOSING BIDDERS.
HE FELT, HOWEVER, HE COULD SELL A COMPROMISE THAT
WOULD, IN EACH PURCHASE, PUT THE BURDEN ON THE ENTITY
TO JUSTIFY WITHHOLDING SUCH INFORMATION AND SUBJECT

SUCH A DECISION TO THE DISPUTE SETTLEMENT PROCEDURES.
HE PROPOSED REPLACING PARA FOUR OF THE INFORMATION SECTION
WITH THE FOLLOWING:

- "4. UPON REQUEST BY ANY UNSUCCESSFUL TENDERER,
- THE PURCHASING ENTITY SHALL PROVIDE HIM PROMPTLY
- WITH PERTINENT INFORMATION CONCERNING THE REASONS
- WHY HIS TENDER WAS NOT SELECTED, INCLUDING INFOR-
- MATION ON BOTH THE CHARACTERISTICS AND RELATIVE
- ADVANTAGES OF THE WINNING TENDER AND, EXCEPT
- WHERE DISCLOSURE OF SUCH INFORMATION WOULD
- PREJUDICE COMPETITION IN FUTURE TENDERS, THE
- NAME OF THE WINNING TENDERER AND CONTRACT PRICE."

IF THE ABOVE LANGUAGE IS ACCEPTED FOR PARA FOUR, HE
WILL DROP THE BRACKETS AROUND NAME AND AMOUNT IN
PARA SIX.

3. EX ANTE - REGARDING EX ANTE PUBLICITY, DERISBOURG,
AGAIN ON A COMMISSION LEVEL, AGREED TO ADOPT THE U.S.
POSITION TO ALLOW NON-SELECTED SUPPLIERS TO PARTICIPATE
IN SELECTIVE PROCEDURES. HIS PROPOSAL FOR ACCOMPLISHING
THIS CHANGE CONSISTS OF TWO PARTS: (1) REPLACE THE
SECOND SENTENCE OF PARA 3(A) OF TENDERING PROCEDURES
SECTION WITH - "SUCH NOTICE WILL CONSTITUTE AN INVITATION
TO PARTICIPATE IN THE PROCEDURE WHETHER OPEN OR SELEC-
TIVE;" AND (2) DROP THE BRACKETS AROUND LAST SENTENCE
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IN PARA 6. HE IS NOT YET READY TO "GO PUBLIC" ON THIS
POSITION, BUT WILL WORK TOWARDS THIS POSITION WITH THE
MEMBER STATES.

4. MTN DEL COMMENT: FOR EX POST, THE EC HAS ACCEPTED
THAT NAME AND AMOUNT MUST BE GIVEN TO LOSING BIDDERS
UNLESS, IN EACH CASE, THE ENTITY DETERMINES IT WOULD
BE PREJUDICIAL TO COMPETITION. THIS PUTS A BURDEN ON
THE ENTITY TO BE ABLE TO JUSTIFY WITHHOLDING SUCH
INFORMATION SINCE THIS DECISION WILL BE SUBJECT TO THE
DISPUTE SETTLEMENT PROCEDURES. BY INCLUDING REFERENCE
TO NAME AND AMOUNT IN THE TEXT, THE EC HAS GONE A LONG
WAY TOWARDS MEETING OUR CONCERNS. WITH REGARD TO
EX ANTE, MTN DEL DOES NOT BELIEVE EC FORMULATION FOR
PARA 3(A) IS PARTICULARLY WELL DRAFTED. BECAUSE EC
HAS ACCEPTED THE U.S. CONCEPT HOWEVER, WE ARE CERTAIN
THE LANGUAGE CAN BE IMPROVED. THE IMPORTANT OBLIGATION
IS MET BY ACCEPTANCE OF LAST SENTENCE OF PARA 6. EC DEL
RECOMMENDED DROPPING "ALL" FROM LAST SENTENCE IN PARA 6.
MTN DEL SEES NO PROBLEM WITH THIS SUGGESTION. WHETHER
FORMULATED AS "ALL SUPPLIERS" OR JUST "SUPPLIERS",
ANY SUPPLIER WHICH SO REQUESTS MUST BE ALLOWED TO

TENDER.

6. IN BRIEF DISCUSSION ON THRESHOLD LEVEL, DERISBOURG SUGGESTED THAT \$100,000 WOULD BE APPROPRIATE AND THAT CONTRACTS UNDER THE THRESHOLD SHOULD BE EXCLUDED FROM THE CODE'S PROVISIONS. COMPLEMENTARY TO THIS, EC DEL ALSO SUGGESTED THAT WE DROP THE "BEST ENDEAVORS" PROVISION FOR STATE AND LOCAL GOVERNMENT BODIES.

7. EC AGAIN QUERIED U.S. FOR POSITION ON NATIONAL SECURITY. WE RESTATED U.S. VIEWS CONCERNING DEFINITION OF NATIONAL SECURITY AND OUR CONCERN WITH THE "LIST" APPROACH. EC RESPONDED THAT THEY WERE WILLING TO BE FLEXIBLE ON THIS ISSUE BUT FELT THAT EITHER A POSITIVE LIMITED OFFICIAL USE

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ACTION STR-07

INFO OCT-01 ISO-00 STRE-00 AF-10 ARA-10 EA-10 EUR-12
NEA-11 AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00
EB-08 FRB-03 H-01 INR-10 INT-05 L-03 LAB-04
NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15 ITC-01
TRSE-00 ICA-11 SP-02 SOE-02 OMB-01 DOE-15 IO-13
DOEE-00 SSO-00 /167 W

-----096574 161157Z /42

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FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 0915
INFO AMEMBASSY BRUSSELS

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USMTN USEEC

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LIST OR NEGATIVE LIST OR BOTH IS ESSENTIAL TO CLEARLY
DEFINING NATIONAL SECURITY. THE EC CONTINUES TO BELIEVE
THAT THE BEST WAY TO DEAL WITH "SENSITIVE" PRODUCTS,
E.G. SHOES AND TEXTILES, IS THROUGH A NATIONAL SECURITY
PROVISION.

8. ALL OF THE ABOVE IS A RESULT OF THE MCDONALD/DENMAN
TALKS ON JUNE 13 WHEN THEY AGREED THAT THE GP NEGOTIATIONS
SHOULD ATTEMPT AN UNBRACKETED TEXT, WITHOUT COMMITMENT
OF EITHER THE USG OR THE EC MEMBER STATES. THE ABOVE
COMPROMISES ARE A PRELIMINARY STEP TOWARDS THIS EFFORT.
WE HAVE TENTATIVELY SCHEDULED JUNE 23 FOR US-EC DRAFTING
EFFORT AND REQUEST ATTENDANCE OF HAUGH (OMB) AND PRUIETT
(COMMERCE) FOR THIS SESSION AND THE PLURILATERAL SESSIONS
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THE FOLLOWING WEEK.

9. DRAFTED BY SHELLEY. MCDONALD

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: GOVERNMENT PROCUREMENT
Control Number: n/a
Copy: SINGLE
Draft Date: 16 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978GENEVA09123
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Document Unique ID: 00
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Film Number: D780251-1141
Format: TEL
From: GENEVA
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1978/newtext/t19780651/aaaabsd.tel
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Litigation History:
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Message ID: ce26e287-c288-dd11-92da-001cc4696bcc
Office: ACTION STR
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Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
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Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
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Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2326013
Secure: OPEN
Status: NATIVE
Subject: GOVERNMENT PROCUREMENT - US/EC BILATERAL-JUNE 14
TAGS: ETRD, MTN, EEC
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/ce26e287-c288-dd11-92da-001cc4696bcc
Review Markings:
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Declassified/Released
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EO Systematic Review
20 Mar 2014
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